

Written Testimony of Steven B. Frates to the Little Hoover Commission December 8, 2004

Comments on Boards and Commissions

Thank you for the opportunity to testify before the Commission. My testimony will be brief, and I will try and address the key issues that your staff indicated you wanted me to cover.

1. When are boards and commissions needed?

The simple answer is that boards and commissions are needed whenever the legislature or the public (through the initiative process) decides that they are needed. There is probably no set rule or criterion that should be employed to determine the need for a board or a commission. The political decision making process, in all its complexity, ultimately makes this decision. I will speak in a moment about some ideas for making boards and commissions more effective, but I don't think that there is a formulaic or pat answer to this question.

2. Functions that boards and commissions can accomplish well:

First and foremost, when properly established and given a clear role, boards and commissions can very effectively tap the expertise of our talented and capable citizenry. Second, boards can perform a valuable advisory role. This is especially important with regard to such things as professional standards and hearing processes involving a high degree of technical or professional expertise. Third, boards can be an important avenue for public participation. Because boards tend to focus on particular issues, they can examine these issues in great depth and with considerable thoroughness, which may not always be possible in the rapid cut and thrust of the normal legislative process. Fourth, it should be recognized that boards can take political heat and, by doing so, can insulate the legislature and other officials from some degree of political fallout on controversial issues. Finally, it must be noted that membership on boards and commissions can be a reward for the political allies and supporters of those making the appointment.

3. Factors for success:

It is my view that there are two factors that are important for boards to be truly successful. First, there should be a clear and precisely defined role or mission. Second, the scope of the board's authority should be precisely articulated. This is particularly true with regard to legislative rulemaking authority and adjudicatory authority.

4. Experiences of board members:

I have had the honor and privilege of serving on the Constitutional Revision Commission and the California Performance Review Commission, as well as on several technical advisory boards. I must say that depending upon the profile and public awareness of the board, as a commission member you hear from a lot of people and discover friends and acquaintances you never knew you had. Such attention can be flattering, but I would recommend that commissioners not get behind on their e-mail or phone messages and also to promptly open every letter, even if you don't recognize the sender's name or return address. In my view, it is even more important to remember that our elected officials are the public's chosen decision makers, not commissioners or board members.

5. Value of boards and commissions in the public decision making process:

Boards and commissions have two great values in the public decision making process. First and foremost, they provide another avenue for public participation in our political decision making process. Second, as mentioned earlier, boards and commissions can focus, in great depth and detail, on issues that warrant such attention but that might not receive it in the legislative process.

6. Ideas for making boards and commissions more effective:

It seems to me the most frequent complaint about boards and commissions is that they can sometimes be arbitrary or even capricious and that when vested with legislative and adjudicatory powers they can exercise such powers in an inconsistent manner. It is very probably true

that many such complaints stem from misunderstandings on the part of those making the complaints about the role, authority or procedures of a particular board or commission. Nonetheless, I have heard these complaints many times over the years, and we certainly heard them during the California Performance Review Commission hearings. Perhaps the following modest suggestions might reduce the frequency of such complaints:

- a. The following information about every board or commission should be readily available online:
 - (1) The establishing authority, including a discussion of the establishing legislation, preferably in clear and accessible terms rather than in “legalese”;
 - (2) A listing of whatever rules, guidelines, or procedures promulgated by the board or commission are currently in effect; and
 - (3) An online forum for discussion of the commission’s actions. This would be especially valuable in raising issues about any questionable commission practices, and it would be a useful feedback tool for commission members and supporting staff, as well as the Governor and legislators to evaluate commission performance.
- b. For regional boards and commissions that are charged with implementing statewide policy, there should be sufficient oversight to ensure that uniform policies, procedures and standards are in place. Any variation from such uniformity should be permitted only when specifically authorized by the legislature, and in those cases it would be useful for the legislature to be quite precise in defining the degree of variation granted to the individual regional boards.
- c. It might be useful to have the proceedings of board and commission meetings broadcast (webcast) on line. There is nothing like public scrutiny to encourage superior performance. The minutes of the meeting should also be available on line for public reference.

- d. It might be a good idea to sunset every commission (except those established by initiative) every 20 years to force legislative re-evaluation.

Again, thank you for allowing me to testify before the commission, and I will be glad to answer any questions.